MONTANA LEGISLATIVE HISTORY

Chapter 438 1983

Bill H 562 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 10	✓ C	Hearing Date(s)	Mar 07	✓ C
		C		Mar 12	✓ C
		C			C
		C			C
Date Out	Feb 10	✓ C		Mar 13	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

-- PHILLIPS -- TO REMOVE THE STATUTORY SPECIFICATIONS CONCERNING ENVELOPES IN WHICH BALLOTS ARE MAILED TO ELECTORS IN THE UNITED STATES SERVICE; PROVIDING THAT SUCH SPECIFICATIONS BE PRESCRIBED BY THE SECRETARY OF STATE CONSISTENT WITH FEDERAL REGULATIONS; AMENDING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/29/83
HEARING: 2/7/83
REPORT: 02/07/83, DO PASS
2ND READING: 02/09/83, DO PASS AYES: 93; NAYS: 1
3RD READING: 02/11/83, DO PASS AYES: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/11/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/12/83
HEARING: 3/3/83
REPORT: 03/03/83, BE CONCURRED IN
2ND READING: 03/05/83 AYES: 49; NAYS: 0
3RD READING: 03/08/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE: 3/8/83

TRANSMITTED TO GOVERNOR: 03/15/83
SIGNED: 3/17/83, CHAPTER 110

560 -- ABRAMS, SPAETH, D. BROWN, ET AL. -- TO REVISE AND CLARIFY THE DUTIES OF MOTOR VEHICLE OPERATORS AND LAW ENFORCEMENT OFFICERS CONCERNING THE FILING OF ACCIDENT REPORTS; TO PROVIDE A PENALTY FOR FAILURE TO FILE A REPORT; AMENDING ....
BY REQUEST OF: THE DEPARTMENT OF JUSTICE

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION: 01/29/83
HEARING: 2/8/83
REPORT: 02/09/83, DO PASS
2ND READING: 02/11/83, DO PASS AYES: 75; NAYS: 0
3RD READING: 02/15/83, DO PASS AYES: 99; NAYS: 0

TRANSMITTED TO SENATE: 2/15/83
REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION: 02/16/83
HEARING: 3/15/83
REPORT: 03/16/83, BE CONCURRED IN
2ND READING: 03/18/83 AYES: 49; NAYS: 0
3RD READING: 03/21/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE: 03/21/83

TRANSMITTED TO GOVERNOR: 03/25/83
SIGNED: 03/30/83, CHAPTER 299

561 -- ADDY, NORDTVEDT -- PROVIDING AN EXCLUSION OF $100 IN INTEREST INCOME FROM ADJUSTED GROSS INCOME TO INDIVIDUALS LESS THAN 65 YEARS OF AGE; AMENDING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON TAXATION: 01/29/83
HEARING: 2/9/83
DIED IN COMMITTEE

562 -- HARPER, ROUSH, METCALF, ET AL. -- TO AMEND THE DEFINITION OF THE CRIME OF

INCEST TO INCLUDE ANY SEXUAL CONTACT WITHOUT CONSENT AND TO EXTEND THE DEFINITION INCLUDE ANY STEPSON OR STEPDAUGHTER WHO HAS NOT BEEN ADOPTED BY THE PERSON COMMIT THE OFFENSE; AMENDING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/29/83
HEARING: 2/10/83
REPORT: 02/10/83, DO PASS, AS AMENDED
2ND READING: 02/12/83, DO PASS AYES: 93; NAYS: 0
3RD READING: 02/15/83, DO PASS AYES: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/15/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/16/83
HEARING: 3/7/83
REPORT: 03/12/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/15/83 AYES: 49; NAYS: 0
3RD READING: 03/17/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 03/17/83
2ND READING: 03/31/83, BE CONCURRED IN AYES: 89; NAYS: 0
3RD READING: 04/01/83, BE CONCURRED IN AYES: 86; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/08/83
SIGNED: 04/11/83, CHAPTER 438

HB 563 -- PAVLOVICH, D. BROWN, DAILY, ET AL. -- TO INCREASE FROM 5% TO 10% DISCOUNT ON THE PURCHASE FROM THE STATE LIQUOR STORE OF UNBROKEN CASE LOTS OF LIQU AMENDING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/29/83
HEARING: 2/7/83
REPORT: 02/08/83, DO NOT PASS
OBJECTION: 2/9/83
2ND READING: 02/12/83, DO NOT PASS, AS AMENDED AYES: 60; NAYS: 55
BILL KILLED

HB 564 -- VINGER -- AUTHORIZING DEALING IN BABY ANIMALS; ELIMINATING THE PENALTY F DEALING IN BABY ANIMALS; REPEALING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON FISH & GAME: 01/29/83
HEARING: 2/8/83
REPORT: 02/08/83, DO NOT PASS
BILL KILLED: 02/09/83

HB 565 -- VINGER -- REQUIRING A DETERMINATION OF LEGIBILITY FOR THE RECORDING DOCUMENTS BY THE COUNTY CLERK AND RECORDER; AMENDING ....

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/29/83
HEARING: 2/14/83
REPORT: 02/15/83, DO PASS
2ND READING: 02/18/83, DO PASS AYES: 89; NAYS: 4
3RD READING: 02/22/83, DO PASS AYES: 94; NAYS: 3

TRANSMITTED TO SENATE: 2/22/83

HOUSE BILL NO. 562

INTRODUCED BY HARPER, ROUSH, METCALF, J. BROWN, WALDRON

IN THE HOUSE

January 29, 1983	Introduced and referred to Committee on Judiciary.
February 4, 1983	On motion by chief sponsor Representative Waldron was added as an author to the bill.
February 10, 1983	Committee recommend bill do pass as amended. Report adopted.
February 11, 1983	Bill printed and placed on members' desks.
February 12, 1983	Second reading, do pass.
February 14, 1983	Considered correctly engrossed.
February 15, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Judiciary.
March 12, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 15, 1983	Second reading, concurred in.
March 17, 1983	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 17, 1983	Returned to House with amendments.
March 31, 1983	Second reading, amendments concurred in.
April 1, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

LC 2177/01

House BILL NO. 562

INTRODUCED BY Harper Roush Mueleay J. Brown

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION OF THE CRIME OF INCEST TO INCLUDE ANY SEXUAL CONTACT WITHOUT CONSENT AND TO EXTEND THE DEFINITION TO INCLUDE ANY STEPSON OR STEPDAUGHTER WHO HAS NOT BEEN ADOPTED BY THE PERSON COMMITTING THE OFFENSE; AMENDING SECTION 45-5-613, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-613, MCA, is amended to read:

"45-5-613. Incest. (1) A person commits the offense of incest if he knowingly marries, ~~or~~ cohabits with, ~~or~~ has sexual intercourse with, or has sexual contact without consent with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter, whether or not he or she has been adopted by the person committing the offense. The relationships referred to herein include blood relationships without regard to legitimacy, ~~and~~ relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter, without regard to the existence of an adoption.

(2) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

~~(2)~~(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

-End-

he wondered if it would be advisable to rewrite 39-71-701. MR. SMITH responded that they discussed this and this section says that there is no way there can be an assignment, attachment or garnishment, or held in anyway liable for debt. He indicated that there are two types of benefits that are paid (1) the compensation to the workmen and (2) the payment of his medical expenses; and they feel that in 71-3-1114 would cover this.

GARY BLEWETT, Administrator of the Workers' Compensation Division of the Department of Labor and Industry, stated that 743 states that no payments under this chapter shall be assignable, subject to attachment or garnisheed; under the Workmen's Compensation law, both medical payments and compensation payments are included under the term, "payment" and he is concerned that in passing this law without addressing 743, you may very well have created a conflict of interpretation. He understood the point that is being made by Mr. Smith that the intent is to focus on insurers only and not to reach a claimant in any way, whether out of his personal income, his compensation income or to have to go through any of the legal proceedings associated with that lien, but the proposed act says, "(2) This part applies to all payments awarded for medical and hospital services pursuant to the acts referred to"; and he says that he sees a conflict between the two.

MR. SMITH declared that he would not want to argue that point, and suggested that there might be something further in here to indicate that this statute does not apply.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 562

REPRESENTATIVE HARPER, District 30, Helena, stated that this bill comes to you as a result of actions of concerned citizens and is the result of the Montana Incest Prevention Coalition; at a convention they had in Missoula

in June of 1982, this bill was a result of that conference. This bill amends the definition of the crime of incest to include any sexual contact without consent and to extend the definition to include any stepson or stepdaugher who has not been adopted by the person committing the offense. He indicated that there will be an amendment proposed and that amendment has his consent.

CELINDA LAKE, representing the Women's Lobbyist Fund, gave a statement in support of this bill. See EXHIBIT H.

MARCIA EIDEL, representing herself, gave testimony in support of this bill. See EXHIBIT I.

JAMES B. WHEELIS, District Judge for the Fourth Judicial District, Missoula, offered a statement in support of this bill. See EXHIBIT J.

CANDACE WIMMER, a member of the Child Abuse Team in Helena, stated that she has been for the past two years working for the County Welfare Office in Lewis and Clark County and, therefore, has dealt directly with incest cases; and she was in support of the bill and also the language expanding the definition of incest; and she stated that the act of incest has very little to do with the emotional damage that is done to the victim.

CRAIG SIMMONS, a child therapist and working for the Southwest Mental Health Center, testified that he has treated many cases of incest over the last seven years and he has treated many cases involving the perpetrator. He noted that from the Henry Kempf Foundation they use a definition of incest as "any sexual act wherein the perpetrator has a real or assumed power or a real or assumed authority, or both, over the victim and where the victim is manipulated into a sexual act by the perpetrator's use of that power or authority and where the goal of the sexual act is the exploitation of the victim for the pleasure of the perpetrator ". He said that was a very broad definition but it certainly includes

a stepfather, who has not adopted a child, it includes a sibling, brother-sister, sister-sister, children in the same family that have made sexual contact - the important thing is the nature of the relationship between the perpetrator and the victim. He stated that he speaks in favor of broadening the definition of what is incest and who can be guilty of incest.

There were no further proponents and no opponents.

REPRESENTATIVE HARPER indicated that they were looking at this bill as a tool and a way to get at some of the problems that confront them and he hopes this will help.

REPRESENTATIVE KEYSER noted that on line 14, it refers to "sexual contact"; yet nowhere in this bill have you spelled out a definition of "sexual contact"; and no where in the section that he can find is this spelled out definitionwise. He indicated that that is so broad - would a child sitting on a grandfather's lap, he rubs her shoulder or kisses her on the neck or something like that - is that sexual contact. REPRESENTATIVE ADDY replied that there is a definition in section 45-2-101.

REPRESENTATIVE KEYSER indicated that there should be a reference to that in the bill.

REPRESENTATIVE EUDAILY commented that a suggestion was made to delete "without consent" on line 14 and line 15 and all of subsection 2, and he wondered why. REPRESENTATIVE HARPER replied that he thought it was real difficult to try and pin that down, especially in a real familiar relationship; also in lines 5 and 6 in the title, it should be amended out. He asked why should they have to prove "without consent"; if this kind of thing happens, it should not be allowed anyway.

REPRESENTATIVE ADDY noted that this seemed to be revolving around a young victim and he wondered if age should enter into it. MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the

Department of Justice, responded that he did not think so because the amendments are directed toward affecting the relationship of any two people in a family unit regardless of age - if one is 60 and one is 10; or if one is 10 and one is 4.

REPRESENTATIVE ADDY commented what if one is 70 and one is 60. He indicated that he could not get too excited about it if it is a stepparent, who has not adopted the child, who marries the person's mother when they are sixty years old; when they are seventy, she dies; and her daughter has a close relationship with him and she is 50 now and they get married. MR. RACICOT said the legal relationship is terminated at that point - they are no longer stepdaughter and stepfather.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 628

REPRESENTATIVE HARPER, District 30, Helena, said that Montana law states that every person who is committed to a mental institution in this state, at the conclusion of the hearing will be advised of the right of appeal; but it does not specify how that message is to be conveyed; but the legislature thought enough of this to accord special priority to this right of appeal; in fact, the law states that any of these appeals will have priority in front of the Supreme Court of the state of Montana over any other cases. He indicated that the problem is that many people find themselves in the situation of not being told - never told - and, therefore, the time limits prescribe thirty days after the order has been given, or if the state is involved as a party, you get sixty days; and there is a question as to whether the communication could really be effective in some of those cases if they were notified at the close of the hearing. He stated that this bill provides some protection to the people who are civilly committed; and it gives them the right to appeal to

REPRESENTATIVE JAN BROWN moved that they amend the bill on page 5, line 24, by striking "three" and inserting "twelve". The motion was seconded by REPRESENTATIVE FARRIS. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE EUDAILY. The motion carried unanimously.

HOUSE BILL 562

REPRESENTATIVE DARKO moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE DAILY.

REPRESENTATIVE EUDAILY moved the amendments. REPRESENTATIVE JENSEN seconded the motion.

CHAIRMAN BROWN indicated that the amendments are in the title on page 1, lines 5 and 6, strike "without consent", and on lines 14 and 15, strike "without consent", and stike lines 23 through 25 in their entirety.

There was no discussion on the amendment and the motion carried unanimously.

REPRESENTATIVE FARRIS moved that the bill be amended on line 14, after "contact" insert " as defined in 45-2-101". The motion was seconded by REPRESENTATIVE KEYSER. The motion carried with REPRESENTATIVE RAMIREZ, REPRESENATIVE JAN BROWN, REPRESENTATIVE ADDY, REPRESENTATIVE JENSEN and REPRESENTATIVE CURTISS voting no.

REPRESENTATIVE DARKO moved that this bill DO PASS AS AMENDED. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

HOUSE BILL 628

REPRESENTATIVE EUDAILY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE CURTISS.

STANDING COMMITTEE REPORT

February 10, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 562

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION OF THE CRIME OF INCEST TO INCLUDE ANY SEXUAL CONTACT WITHOUT CONSENT AND TO EXTEND THE DEFINITION TO INCLUDE ANY STEPSON OR STEPDAUGHTER WHO HAS NOT BEEN ADOPTED BY THE PERSON COMMITTING THE OFFENSE; AMENDING SECTION 45-5-613, MCA."

Respectfully report as follows: That HOUSE Bill No. 562

BE AMENDED AS FOLLOWS:

1. Title, line 5 through line 6.
FOLLOWING: "CONTACT"
Strike: "WITHOUT CONSENT"

2. Page 1, line 14 through line 15.
Following: "contact"
Strike: "without consent"
Insert: "as defined in 45-2-101"

3. Page 1, following line 22.
Strike: (2) in its entirety
Renumber subsequent subsection.

AND AS AMENDED

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HOUSE BILL 562 DATE February 10, 1983

SPONSOR Harper

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Marcia Eisel	Helena	Self	✓	
Colenda Lake	Helena	WLF	✓	
Craig Simmons	Helena	Mental Health.	✓	
Paula Hemmer Clancy		Chief Atty Legal Svcs	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

Exhibit H
HB 562
2/10/83

TESTIMONY OF CELINDA C. LAKE, WOMEN' LOBBYIST FUND, IN SUPPORT OF HB 562, BEFORE HOUSE JUDICIARY COMMITTEE ON FEBRUARY 10, 1983

The Women's Lobbyist Fund supports HB 562. We were asked by the Montana Incest Prevention Coalition to work on this piece of legislation. Incest is a growing problem of which we are just becoming aware of the magnitude. According to the Family Violence Research Program at the University of New Hampshire, 1 in 30 children is a victim of sexual abuse by a parent or relative. Of all incest cases according to the American Humane Association's study of Child Abuse, 35% of the offenders in sexually maltreated incidents with children are stepfathers. Their studies also show that the average age of onset of sexual abuse is 3 years and the average age of first report of sexual abuse is 7 years.

Figures for Montana are not universally available in the same form, but for Missoula County last year there were 51 reported cases of child sex abuse serviced by the intake service of the Missoula County social services. That was an increase in reporting of 34%, which has been the average increase in the last couple of years. In Missoula County 36% of the cases of sexual abuse involved a stepfather who had not adopted his stepdaughter or stepson. In Lewis and Clark County about 30% of the cases of sexual abuse of children involve a stepfather who had not adopted his stepdaughter or stepson. Under our current incest laws these offenders can not be prosecuted under the incest statutes, but must be prosecuted under the sexual assault statutes. This is common since incest statutes usually describe the offenders in terms of blood relationships. However, the stepfather/stepchild abuse is even more common than the father/child abuse because the incest taboo is diluted in these cases. This is also the fastest growing type of incest being reported. Statewide incest personal believe that it is important to recognize this reality in our incest statutes.

Incest, unlike sexual assault, is a crime characterized by a "pathological paradox" involving the entire family. It is frequently important to the victim and to treatment personel to call and prosecute incest by its real name and thus to recognize the violation of the familial bond. While cases of incest between stepparents and stepchildren can currently now be prosecuted under sexual assault statutes -- that is really a very different type of crime and puts the victim in a very different position in terms of relationship and bond to the assailant and in terms of presumed consent. Calling this crime incest is also important in setting the tone for treating the offender. In incest one goal may be to keep the assailant relating to the victim -- something which is not a goal in sexual assault. Judy Smith of the Incest Prevention Coalition has also found that in some counties in Montana it is a common matter of policy to waive prosecution if the family will go into counseling when the crime charged is incest, but that is not always practiced when the same crime charged is sexual assault.

The other change proposed in HB 562 is to broaden the definition of incest to include sexual contact, as the sexual assault statutes do. Particularly, in a family setting sexual abuse often includes fondling and harassment in early stages when the crime does not yet include intercourse. Under our current incest statutes this crime can not be presecuted as incest.

Many prosecutors hesitate to use the incest statutes even where they are now applicable because charging someone with incest implicitly identifies the victim. It is thus important to point out that HB 562 would not in anyway change the sexual

Kathy A. van Hook, President · Sib Clack, Vice President · Connie Flaherty-Erickson, Treasurer · Celinda C. Lake, Lobbyist · Stacy A. Flaherty, Lobbyist

assault statutes, but would broaden the options open to victims and prosecutors. If prosecuters preferred to use our sexual assault statutes for reasons of anonymity, that option would in no way be changed by this bill. The changes suggested in HB 562 would, however, allow the incest statutes to be more accurately applied to presecute the crimes which are really occurring in families. For these reasons we urge support of HB 562.

Judiciary Committee
February 10, 1983

Exhibit I
HB 562
2/10/83

TESTIMONY OF : Marcia Eidel
in support of HB 562, as amended

My interest in this issue stems primarily from my experience in the Juvenile Law Clinic at the University of Montana Law School in which I acted as guardian ad litem for a thirteen-year-old incest victim who had been sexually molested by her stepfather for four years. My concern has been heightened as I have watched a number of my friends in their adult lives come to recognize, admit and attempt to deal with the fact that they were, as children, victims of incest.

I am speaking in favor of HB 562, as amended, for two reasons. First, expanding this statute to include the stepparent-stepchild relationship regardless of whether there has been an adoption simply makes good sense.

As I mentioned, the young woman with whom I worked had been sexually molested by her stepfather for four years beginning when she was nine years old. Much of the effect on her stemmed from a betrayal by someone in a trusted position in her family---a breach of the familial relationship---and the emotional devastation she encountered as a result had absolutely no relation to whether she had been adopted by that individual.

Second, the term incest is a term of art which carries with it certain social connotations. Central to this concept is the breach of the trust relationship in a family setting. By adding "sexual contact" to the definition of incest an obvious and important means of breaching this trust could be addressed as incest. Adding this language also would allow a victim of such a breach the option of dealing with the social connotations of incest as opposed to those of rape or sexual assault. While this distinction may seem subtle to those of us who have been fortunate enough to have avoided direct confrontation of this issue in our personal lives, I can assure you it is significant to the incest victims I have spoken with and is certainly an option which should be available.

James B. Wheelis
District Judge

Missoula County Courthouse
Missoula, MT 59801
(406) 543-7612

Exhibit I
HB 562
2/10/83

February 9, 1983

To the House Judiciary Committee:

I am writing to encourage support of House Bill 562, sponsored by Representative Hal Harper, which would broaden the statutory definition of incest to include assaults by step-fathers upon their step-children.

As a district court judge, I am directly involved with incest cases, and I know that step-fathers are sometimes the offenders. Currently assaults by step-fathers are defined not as incest, but as criminal sexual assault, which ignores the familial nature of the problem, and limits the options of the courts in addressing it.

By including assaults by step-fathers in the definition of incest, HB562 would allow both the courts and the Department of Social and Rehabilitative Services to address this matter as a crime and as a family crisis. I belive the result would be a better opportunity for rehabilitation of offenders, and, more important, reduced trauma and increased assistance to family victims.

Again, I strongly encourage support of HB562.

Sincerely,

James B. Wheelis
District Judge
Fourth Judicial District

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Not Printed at Public Expense

WITNESS STATEMENT

Name CRAIG SIMMONS, MSW Committee On

Address 512 LOGAN AVE., HELENA Date 2/10/83

Representing MENTAL HEALTH CENTER Support c

Bill No. 562 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Def. of Incest is any sexual act where the initiator has authority & / power over the victim, or the power / authority to manipulate the victim, for ~~ily~~ his/her gratification.

2. This broad def. includes more than parent-child relations.

3. Def. includes more than actual intercourse

4. Def. gained from State level workshops run by SRS & State Dept. of Mental Health, from the C. Henry Kempe Foundation in Denver, formerly the National Center for Child Abuse. (Program is federally funded.)

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Candace Kimmes Committee On

Address Forest Park, Oklahoma Date 2/10/83

Representing Child Abuse Team Support ✓

Bill No. 562 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Damage done to victims of sexual abuse cannot be purged by the act of abuse - therefore expanded definition to include "any sexual act" - making it a prosecutable crime will benefit victim as well as offender.
2. Sexual abuse perpetrated by a step parent is often as emotionally damaging to the victim as that perpetrated by natural parent - both are trusted adult parental figures.
3. Prosecution of offender must remain an option -
4. Treatment of offender is statistically more successful when court ordered.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 7, 1983

The thirty-sixth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 7, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Berg who was excused.

CONSIDERATION OF HOUSE BILL 562: Representative Harper advised that he was sponsoring this bill at the request of the Montana Incest Prevention Coalition. Incest crimes are serious and more prevelent then we once thought. The purpose of HB562 is to expand the definition of the crime of incest to include sexual contact other than intercourse. It also expands the definition to include any stepson or stepdaughter who has not been adopted by the person committing the offense. This bill should broaden prosecutors' options.

PROPONENTS: Celinda Lake, representing the Women's Lobbyist Fund, testified in favor of the bill and submitted her written testimony (see attached Exhibit "A"). She also distributed to the Committee a copy of a letter from Ann German of the law firm Keller & Gilmer, which also supports this legislation (see attached Exhibit "B"). A letter from James B. Wheelis, District Judge for the Fourth Judicial District (see attached Exhibit "C") was also read to the Committee which supports this legislation.

Alice Morse, representing the Wouthwest Mental Health Center, supported the bill. In her practice as a psychiatric social worker she has dealt with 20 children during the past nine months who have been victims of incest and sexual abuse. Her written statement was submitted for inclusion in these Minutes which gives statistics for these types of abuses (see attached Exhibit "D").

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan questioned why the language regarding consent was stricken from the bottom of page 1. Reprsentative Harper advised this was done because it is hard to prove consent.

Senator Mazurek was concerned with the bill applying to consenting adults related by marriage and felt the stricken language should be reinserted. Representative Harper advised the Committee to exercise its own judgement. Chairman Turnage was also concerned

how this bill would affect marriages that now exist between step-children and parent and questioned if the prohibition against ex post facto application of laws would apply to this situation.

Representative Harper closed by stating the original purpose of the incest laws were to keep bloodlines pure, but there are now other reasons for amending these laws.

CONSIDERATION OF HOUSE BILL 628: Representative Harper, sponsor, advised that this bill will insure a person's right to review of a court order finding him to be seriously mentally ill. HB628 will better protect those people who are civilly committed but are not timely informed of their right to appeal.

Marilyn Gray, a woman who was denied an insanity appeal, testified in favor of the bill and submitted her written testimony (see attached Exhibit "E.")

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek expressed confusion as to why the petitioner would go to the Supreme Court for a fact finding hearing. Counsel advised that as a practical matter, petitioner would receive more thorough relief by going to the Supreme Court rather than going to the District Court Judge who found them mentally ill.

Senator Shaw questioned how many cases this bill will affect. Representative Harper did not have an answer, but emphasized how important the Marilyn Gray case is.

Representative Harper closed by advising the Committee that there is a need to resolve the question of retroactivity of this if this law is enacted. The Supreme Court has said that retroactivity of a law must be stated explicitly.

RECONSIDERATION OF HOUSE BILL 589: Representative Schye advised that he was present to answer any questions regarding this bill. He also advised that Marc Racicot was available to answer any questions.

Marc Racicot, representing the County Attorney's Association, informed the Committee that he had testified before the House Judiciary Committee in favor of this bill. There is currently a conflict between those sections of the statutes which state who is responsible for costs of a jury trial. This bill would state that those people who had court appointed counsel or their own counsel can be required to pay the jury costs.

It was noted that Senator Daniels had requested that this bill be returned to the Committee for reconsideration. Unfortunately, he was not present at this time to ask questions.

those instances in which an attorney had to be hired to force the insurer to reverse its position. He felt that if it is necessary for a claimant to hire an attorney to secure a reversal, he should not have to bear the cost of the attorney fees.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 589: Senator Daniels arrived and was informed that Marc Racicot had been present for questions concerning this bill. Senator Daniels was opposed to this bill, as he felt that when the Constitution guarantees a jury trial, the defendant should not have to bear the costs. Chairman Turnage concurred with this assessment. Senator Daniels moved HB589 BE NOT CONCURRED IN. This motion carried unanimously. It was the consensus of the Committee that the Constitution grants a jury trial to an accused, NOT just upon the condition that he can pay for it.

ACTION ON HOUSE BILL 376: The Committee had previously passed a Senate Bill which deals with the grandparents visitation rights; however, it is not as complex as HB376. HB376 gives more guidance to the courts, where as the Senate Bill leaves more discretion. Senator Crippen objected to the language on page 3, lines 7 through 11. Senator Crippen moved to TABLE HB 376. This motion carried unanimously.

ACTION ON HOUSE BILL 577: The Committee discussed SB145 and agreed that it would be wise to legislate that bar examination fees are commensurate with costs. Senator Halligan moved HB577 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 512: The Committee felt that the bill needed to be amended in order for it to be workable. It was suggested that the new language in section 1 should be deleted and a new subsection (2) should be added which would provide that attorney fees are to be paid in the event the insurer denies liability for medical or hospital services and subsequently reverses its decision and honors the claim only because of action by the claimant's attorney. It was determined that the problems lie in small claims. The Committee debated limiting the bill to apply only to medical services. Senator Mazurek felt this area is already covered in the law. It was agreed that as a practical matter attorney fees are paid on all claims where an attorney is retained. Senator Shaw moved to TABLE HB512. This motion carried unanimously,

FURTHER CONSIDERATION OF HOUSE BILL 562: The Committee agreed the bill needed to be amended. Senator Mazurek suggested inquiring of Marc Racicot what the rationale was for eliminating the consent language. The Committee was concerned with marriages between stepchildren and parents and did not want to include adults under the provisions of the bill. Action was deferred for further consideration.

Jean A. Turnage

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3-7-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)			✓
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

DATE 3-7-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Ellen Dreyer	Am Fed Assn	512		—
Alice Morse	S.W. Mental Health Ctr	562	✓	
Celinda Lake	Women's Lobbyist Fund	562	✓	
Barbara Hoag	MTLA	512	✓	
George Wood	Montana Self Insurers Assn	512		✓
Earl Lory	Ry Adv Bd	575	✓	
Chas Smith	Mont Hosp Assn	575	✓	
Jim Murry	Mont. AFL-CIO	512	✓	
" " "	" " "	575	✓	

(Please leave prepared statement with Secretary)

WOMEN'S LOBBYIST FUND
Box 1099
Helena, MT 59624
449-7917

EXHIBIT "A"
March 7, 1983

TESTIMONY OF CELINDA C. LAKE, WOMEN' LOBBYIST FUND, IN SUPPORT OF HB 562, BEFORE SENATE JUDICIARY COMMITTEE ON MARCH 7,1983

The Women's Lobbyist Fund supports HB 562. We were asked by the Montana Incest Prevention Coalition to work on this piece of legislation. Incest is a growing problem of which we are just becoming aware of the magnitude. According to the Family Violence Research Program at the University of New Hampshire, 1 in 30 children is a victim of sexual abuse by a parent or relative. Of all incest cases according to the American Humane Association's study of Child Abuse, 35% of the offenders in sexually maltreated incidents with children are stepfathers. Their studies also show that the average age of onset of sexual abuse is 3 years and the average age of first report of sexual abuse is 7 years.

Figures for Montana are not universally available in the same form, but for Missoula County last year there were 51 reported cases of child sex abuse serviced by the intake service of the Missoula County social services. That was an increase in reporting of 34%, which has been the average increase in the last couple of years. In Missoula County 36% of the cases of sexual abuse involved a stepfather who had not adopted his stepdaughter or stepson. In Lewis and Clark County about 30% of the cases of sexual abuse of children involve a stepfather who had not adopted his stepdaughter or stepson. Under our current incest laws these offenders can not be prosecuted under the incest statutes, but must be prosecuted under the sexual assault statutes. This is common since incest statutes usually describe the offenders in terms of blood relationships. However, the stepfather/stepchild abuse is even more common than the father/child abuse because the incest taboo is diluted in these cases. This is also the fastest growing type of incest being reported. Statewide incest personal believe that it is important to recognize this reality in our incest statutes.

Incest, unlike sexual assault, is a crime characterized by a "pathological paradox" involving the entire family. It is frequently important to the victim and to treatment personel to call and prosecute incest by its real name and thus to recognize the violation of the familial bond. While cases of incest between stepparents and stepchildren can currently now be prosecuted under sexual assault statutes -- that is really a very different type of crime and puts the victim in a very different position in terms of relationship and bond to the assailant and in terms of presumed consent. Calling this crime incest is also important in setting the tone for treating the offender. In incest one goal may be to keep the assailant relating to the victim -- something which is not a goal in sexual assault. Judy Smith of the Incest Prevention Coalition has also found that in some counties in Montana it is a common matter of policy to waive prosecution if the family will go into counseling when the crime charged is incest, but that is not always practiced when the same crime charged is sexual assault.

The other change proposed in HB 562 is to broaden the definition of incest to include sexual contact, as the sexual assault statutes do. Particularly, in a family setting sexual abuse often includes fondling and harassment in early stages when the crime does not yet include intercourse. Under our current incest statutes this crime can not be presecuted as incest.

Many prosecutors hesitate to use the incest statutes even where they are now applicable because charging someone with incest implicitly identifies the victim. It is thus important to point out that HB 562 would not in anyway change the sexual

assault statutes, but would broaden the options open to victims and prosecutors. If prosecuters preferred to use our sexual assault statutes for reasons of anonymity, that option would in no way be changed by this bill. The changes suggested in HB 562 would, however, allow the incest statutes to be more accurately applied to presecute the crimes which are really occurring in families. For these reasons we urge support of HB 562.

EXHIBIT "B"
March 7, 1983

KELLER & GILMER
ATTORNEYS AT LAW
SUITE 18, WHIPPS BUILDING
KALISPELL, MONTANA 59901

ROBERT S. KELLER
BRENDA J. GILMER
Ann C. German

P.O. BOX 1954
(406) 755-1300

March 6, 1983

Senator Jean Turnage
Senate Judiciary Committee
Montana Senate
Capitol Station
Helena, Montana 59621

Re: H.B. 562, regarding the crime of incest

Dear Senator Turnage,

I am writing to urge passage by your committee of H.B. 562, a bill designed to amend the definition of the crime of incest. I had hoped to appear in person to testify in support of this bill, but I just learned today that the hearing will be tomorrow morning, and I am unable to appear on such short notice. I will, therefore, express my views in favor of this legislation and attempt to meet any opposing arguments. (I understand that there has been no adverse testimony to date, but I have discussed the bill with several attorneys who question the need for the amendments.)

I believe that I am well qualified to express my views on this subject as I have spent the last seven years as an attorney advocating the rights of children, and I have worked with many incest victims, both children and adults. I have long thought that the current definition of "incest" in the Montana Criminal Code did not adequately reflect the factual reality of incestuous abuse in Montana families; that is, my experience with incest victims and abusers and related family members demonstrates that the criminal behavior is not merely nonconsensual sexual assault or intercourse, but the violation of the trust relationship between the parent and child. The current statute merely reflects eugenic and moral concerns: the prohibition of marriage between certain family members, for instance, does nothing to prevent the sexual abuse of the six-year-old child by her stepfather.

I have been active in educating the public about incest, and am currently one of the organizers of a state-wide effort to increase awareness of the high incidence of this abuse.

H.B. 562
3

As a side effect of this work, I have met many incest "survivors" (adult women and men) who feel very strongly that their treatment by family members during their childhood has marked them in a tragic and long-lasting way, and they have chosen, through therapy or other ways, to identify themselves as incest victims, not rape victims. As with rape victims in the early 70's, it is recognized by professionals who treat psychological trauma that a large degree of recovery depends upon the ability of the patient to honestly identify the cause of the problem. Although this may not be the primary purpose of a criminal definition, it is true that many of these victims would be regarded as victims of non-differentiated sexual abuse as the familial relationship is not present in the current incest statute.

Similarly, the current definition is not helpful to the social services personnel or the judiciary, as the word "incest" is a word of legal art, and is much broader than the current statutory definition. I have discussed this problem with prosecutors, social workers, teachers and judges, and the majority agree that the definition should be expanded to include "parent" figures who are not related by blood or adoption.

For these reasons, I urge a "do pass" vote by your committee, and I would be happy to talk with you about the bill if you desire. Again, my apologies for my inability to appear personally at the hearing.

Sincerely,

Ann C. German

James B. Wheelis
District Judge

EXHIBIT "C"
March 7, 1983

Missoula County Courthouse
Missoula, MT 59801
(406) 543-7612

February 9, 1983

To the House Judiciary Committee:

I am writing to encourage support of House Bill 562, sponsored by Representative Hal Harper, which would broaden the statutory definition of incest to include assaults by step-fathers upon their step-children.

As a district court judge, I am directly involved with incest cases, and I know that step-fathers are sometimes the offenders. Currently assaults by step-fathers are defined not as incest, but as criminal sexual assault, which ignores the familial nature of the problem, and limits the options of the courts in addressing it.

By including assaults by step-fathers in the definition of incest, HB562 would allow both the courts and the Department of Social and Rehabilitative Services to address this matter as a crime and as a family crisis. I belive the result would be a better opportunity for rehabilitation of offenders, and, more important, reduced trauma and increased assistance to family victims.

Again, I strongly encourage support of HB562.

Sincerely,

James B. Wheelis
District Judge
Fourth Judicial District

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Not Printed at Public Expense

(This sheet to be used by those testifying on a bill.)

EXHIBIT "D"
March 7, 1983

NAME: Alice Morse DATE: 3-7-83

ADDRESS: 1621 6th Ave

PHONE: 442-6107

REPRESENTING WHOM? S.W. Mental Health Center

APPEARING ON WHICH PROPOSAL: HB 562

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

In my practice as a psychiatric social worker, with a specialty in working with children I have seen in treatment 20 children in the last 9 mo. who are victims of incest and sexual abuse. Of these only 4 were molested by their natural father, 3 by older brothers or foster brother & 13 or over 70% by step-fathers. Almt 5 of 7 of these youngsters were subjected to intercourse. The other 50% submitted to fondling, oral manipulations, & other sexual acts, not intercourse.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ACTION ON HOUSE BILL 42: It was the consensus of the Committee that the two bills being heard in Agriculture may more effectively deal with the problem. Senator Mazurek moved to TABLE HB42. This motion carried unanimously.

ACTION ON HOUSE BILL 562: Senator Mazurek proposed to amend the bill to add consent as a defense. The Committee also determined the definition of "cohabitation." Senator Daniels felt the language on lines 17 and 18 and lines 21 and 22 was redundant because if the adoption takes place there is no longer a step-relationship. The age of consent was discussed. Senator Mazurek then moved to amend the bill as shown on the attached Committee Report. This motion carried unanimously. Senator Mazurek moved that AS AMENDED HB562 BE CONCURRED IN. This motion also carried unanimously.

RECONSIDERATION OF HOUSE BILL 660: The Committee agreed they should reconsider their action on House Bill 660. An amendment was proposed by Senators Turnage and Mazurek to require three prerequisites to the issuance of the letter. It was suggested that the defendant as well as the complainant should have the option to request a right to sue letter. The bill was then referred to counsel for research.

ACTION ON HOUSE BILL 825: It was agreed that the amendments proposed were complicated. Senator Daniels was concerned with where the burden of proof lies and that the condemnee must show cause. "Reasonable effort" was discussed. Senator Berg moved to adopt all of the Northern Plains' suggested amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Daniels moved to adopt #1, #5 and #6 of the Montana Power Company proposed amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Turnage then moved to strike "license" on page 3, line 21 and to insert "other interest." This motion carried unanimously. Senator Halligan moved that AS AMENDED HB825 BE CONCURRED IN and this motion passed unanimously.

ACTION ON HOUSE BILL 220: The Committee felt that HB220 would require the court to order the tenant to pay accrued rent. Some Committee members stated this bill was not really necessary. Senator Crippen moved HB220 BE CONCURRED IN. This motion failed with Senators Daniels, Halligan, Berg, Shaw and Brown voting in opposition. Senator Mazurek stated that the tenant has the ability to pay the court now, but this bill will require the court to be paid in every instance. He suggested leaving the court with some discretion. Senator Shaw moved that HB220 BE NOT CONCURRED IN. A roll-call vote was taken and the motion carried seven to two.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3-12-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 12 19 83

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MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 562

Harper (Shaw)

House

Respectfully report as follows: That Bill No. 562

third reading bill, be amended as follows:

1. Title, line 6.
Strike: "AND"
Insert: ";"

2. Title, line 8.
Following: "OFFENSE;"
Insert: "PROVIDING FOR THE DEFENSE OF CONSENT;"

3. Page 1, lines 17.
Strike: ", whether or not" through "offense" on line 18.

4. Page 1, lines 22 and 23.
Strike: ", without regard to the existence of an adoption"

Continued on Page 2

And, as so amended,

~~DO PASS~~ BE CONCURRED IN

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

March 12 19 83

5. Page 2.
Following: line 1.
Insert: "(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

Renumber: subsequent subsection.

And, as so amended,
BE CONCURRED IN

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.